



Attorney Docket No. SHP-02003/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Shirley Pollack

Serial No.: 09/939,993

Group Art Unit: 3742

Filing Date: August 27, 2001

Examiner: John A. Jeffery

Title: FORCED AIR DRYER FOR INFANT'S BOTTOM

APPEAL BRIEF

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TECHNOLOGY CENTER R3700

Box AF
Assistant Commissioner for Patents
Washington, DC 20231

Dear Sir:

I. Real Party in Interest.

The real party in interest is Ms. Shirley Pollack, 5861 Lockwood, West Bloomfield, Michigan 48322.

II. Related Appeals and Interferences.

There are no related appeals or interferences.

III. Status of Claims.

Claims 1-15 all stand rejected in this application, of which claims 8-12 were withdrawn from consideration pursuant to the Examiner's Office Action Summary mailed August 23, 2002. Claims 1-7 and 13-15 are the subject of this appeal.

IV. Status of the Amendments.

No amendments have been filed subsequent to the final rejection made in the Office Action Summary dated August 23, 2002.

V. Summary of the Invention.

The present invention provides relief from the irritation associated with diaper rash that forms on the moist skin of a baby after a diaper changing process. The invention incorporates an air blower mounted within a housing wherein the housing includes a resilient end-piece disposed with a surface material designed to minimize skin abrasion (page 3, lines 1-5). The dryer is constructed similar to a hair dryer and includes a housing that contains a blower that draws air into the housing through at least one air inlet hole in the housing and directs the air out through an outlet duct. The blower is connected to an electric power source such as a battery or an AC outlet (page 4, lines 9-16). The dryer also includes an end piece that is fitted to the end of the outlet duct (page 4, lines 20 and 21). Materials used to form the end piece might include polyethylene, synthetic or natural rubbers, elastomers, medium density polyethylenes, polypropylene, etc. The surface of the outermost end of the end piece is preferably smooth with no sharp edges so as to reduce abrasion or irritation of skin if contact is made during the drying process (page 5, lines 16-22).

Because the dryer is intended for use with infants, it is preferred that only room temperature or slightly warmed air be blown out through the outlet duct. Therefore, unlike a hair dryer, the inventive dryer does not include a high-power electric heater. In one embodiment, the dryer includes no heating device so that only room temperature air flows out through the outlet duct. In another embodiment, a low-power air heater is provided for slightly warming the air flowing out of the outlet duct. It is preferred that the air be heated only to approximate body temperature or a few degrees warmer (page 7, lines 11-20).

VI. Issues.

1. Are claims 1-7 and 13-15 unpatentable under 35 U.S.C. §103(a) in regards to DE 2637484 in view of Caruso (U.S. Patent 3,836,750); in further view of Martin (U.S. Patent 1,660,802); and in further view of Chimera (U.S. Patent 5,394,620)?
2. Is claim 4 unpatentable over DE 2637484 in view of Caruso (U.S. Pat. No. 3,836,750) and in further view of Martin (U.S. Pat. No. 1,660,802)?
3. Is claim 14 unpatentable over DE 2637484 in view of Caruso (U.S. Pat. No. 3,836,750), and further in view of Chimera (U.S. Pat. No. 5,394,620)?

VII. Grouping of Claims.

For the purposes of appeal, all pending claims stand or fall together.

VIII. Argument

A. DE 2637484 is non-analogous art.

Claim 1 stands rejected over DE 2637484 in view of Caruso U.S. Patent No. 3,836,750.

Appellant's invention provides an air blower operative to blow room temperature or slightly warmed air out through an outlet duct for aiding the evaporation of moisture on a person's body, particularly an infant's bottom. Unlike a hair dryer or other traditional air blowers, the present invention does not include high-powered electric heaters which may cause burning to a person's skin. The dryer is preferably battery powered to facilitate portability and to provide a comfortable non-irritating and safe means of evaporating moisture on an infant's bottom such that the risk of the infant acquiring diaper rash is minimized. A preferred embodiment of the invention includes a deformable end piece, which may contact the infant during drying, fitted to the outlet duct of the air blower. Materials used for the end piece are preferably formed of a soft and smooth material with no sharp edges so as to reduce abrasion or irritation to the skin if contact is made during the drying process.

The DE 2637484 reference discloses a handheld heater for thawing frozen vehicle door locks comprising a housing that encloses an electric heating element and a motor driven fan being powered by two small batteries. Appellant respectfully submits that the DE 2637484 reference is non-analogous art and should not be used as a reference to reject the present application.

In determining whether prior art is analogous, two criteria are set forth as measures to be used in the evaluation of the prior art reference. First, it must be determined "whether the art is from the same field of endeavor . . ." and second, "if the reference is not within the inventor's field of endeavor, whether the reference is still reasonably pertinent to the particular problem with which the inventor is involved." *In re Deminski*, 796 F.2d 436, 422.

With regard to the first criteria, Appellant submits that the present invention and the invention of the DE 2637484 reference are not in the same field of endeavor. Appellant's field of endeavor relates to providing a safe and comfortable means of evaporating moisture from a person's body such that irritation associated with wiping or hand drying is obviated. The invention is

designed to output room temperature or slightly warmed air such that burning a baby's skin is prevented.

The DE 2637484 reference endeavors to provide a handheld heater for thawing the frozen door locks on a vehicle. It is appreciated that such a device would be designed to output sufficiently heated air such that the thawing of a frozen door lock occurs rather quickly, especially since the user will most likely be using such a device while standing outside in very cold weather. The reference suggests that the device disclosed therein resembles a "hand torch" which suggests a device that includes a hot flame or is capable of producing heat as hot as fire such that something may be caused to burn. Clearly, Appellant's field of endeavor does not include or even extend to a "hand torch" in the context of a device to be used for evaporating moisture from a person's body. In Appellant's field of endeavor, such a device would certainly cause more harm than good when attempting to evaporate moisture from a person's skin, particularly an infant's bottom.

Appellant's invention addresses problems associated with diaper rash caused by moisture on the skin of a baby occurring before, and frequently after, a diaper changing process. Once the skin has become infected, using a dry towel to remove moisture from the infant's bottom may irritate the skin surface causing the infant much discomfort. Appellant's invention seeks to provide an alternative to hand drying or wiping the moisture away from the infant's bottom by blowing room temperature or slightly warmed air over the moist skin until the skin dries. Appellant's invention provides a soothing advantage over towel drying the moistened area and provides a means of drying the area more quickly than would be possible through natural, unassisted evaporation.

The DE 2637484 reference seeks to overcome the problems associated with frozen door locks of a vehicle whereby key entry into the vehicle is prevented until the locks can be thawed. It is appreciated that the inventor herein seeks to provide a device that would quickly resolve this problem by raising the temperature of the frozen lock quickly and to an adequate temperature such that the thawing of the lock occurs in a minimal amount of time. In this manner, the user would not have to be exposed to cold, inclement weather or be deprived of the use of his or her vehicle for any substantial period of time.

Appellant's invention addresses problems associated with evaporating moisture on a person's body without the need for hand drying or wiping, which may cause skin irritation and discomfort under certain conditions. The DE 2637484 reference addresses a problem associated

with a frozen door lock typically caused by exposure to very cold temperatures. Appellant submits that the differences in the fields of endeavor and the particular problem with which the inventors are involved preclude a finding of obviousness in view of the DE 2637484 reference.

Appellant finds further support for the foregoing in *In re Clay*, 23 USPQ2d 1058 (Fed. Cir. 1992). In *Clay*, the issue was whether the Board's conclusion was correct that Clay's invention would have been obvious from the combined teachings of Hetherington and Sydansk. Clay argued that the claims at issue were improperly rejected over Hetherington and Sydansk because Sydansk was not analogous art. The Board agreed with the examiner that although neither reference alone described Clay's invention, Hetherington and Sydansk combined supported a conclusion of obviousness. Hetherington disclosed an apparatus for displacing dead space in liquid using impervious bladders formed with flexible membranes, and Sydansk disclosed a process for reducing the permeability of hydrocarbon oil bearing formations and thus improving oil production using a gel similar to that in Clay's invention.

On appeal, the Court used the two above-mentioned criteria for determining whether the prior art was analogous, namely, "whether the art was from the same field of endeavor . . ." and whether the reference considered to be non-analogous art was still "... reasonably pertinent to the particular problem with which the inventor, [namely Clay,] was involved." *In re Deminski*, 796 F.2d 436, 422. The Appeals Court found that the Sydansk reference could "... not be considered to be within [Clay's] field of endeavor merely because both related to the petroleum industry." *In re Clay*, 23 USPQ2d 1058, 1060. The Sydansk reference disclosed "... the use of a gel in unconfined and irregular volumes within underground natural oil bearing formations to channel flow in a direction desired. Clay taught the introduction of a gel to the combined dead volume of a manmade storage tank used for storing refined liquid hydrocarbon products." *Id.* The Appeals Court found that the "... Board clearly erred in considering Sydansk to be within the same field of endeavor as Clay's." *Id.* Appellant submits that the present invention and the invention of the DE 2637484 reference are not within the same field of endeavor merely because they both relate to air blowing devices. Appellant's field of invention relates to providing an air blowing device that outputs room temperature or slightly warmed air for evaporating moisture on a person's skin while the DE 2637484 reference teaches a device resembling a "hand torch" for use in quickly thawing a frozen door lock of a vehicle. It is appreciated that such a device would be required to output heated air at

a temperature substantially above room temperature, or slightly warmed, air. Accordingly, Appellant submits that the DE 2637484 reference should not be considered to be within the same field of endeavor as the present invention.

Secondly, Appellant submits that the DE 2637474 reference is not reasonably pertinent to the particular problem with which the present invention is involved. In *Clay* the Appeals Court found that Sydansk's gel treatment of underground formations functioned to fill anomalies so as to improve flow profiles through underground formations, while Clay's gel functioned to displace liquid product from the dead volume of a storage tank. Sydansk was faced with the problem of recovering oil from rock "... where the water had channeled through formation anomalies and bypassed oil present in the matrix." *Id.* 1061. The Court found that such a problem was not pertinent to the particular problem with which Clay was involved, namely, "... preventing loss of stored product to tank dead volume while preventing contamination of such product." *Id.*

Appellant submits that the problem addressed in the DE 2637484 reference is not reasonably pertinent to the particular problem with which the present invention is involved. The problem which the DE 2637484 reference attempts to solve is how to quickly unthaw a frozen door lock of a vehicle. Appellant's invention seeks to solve the problems associated with towel drying the moist skin of a person wherein the skin of that person may be very sensitive to touch and/or abrasion. Although the DE 2637484 reference refers to a device producing a current of warm air for thawing frozen locks, the reference refers to the device as resembling a "hand torch", which suggests that the device outputs hot air at a temperature substantially above room temperature as according to Appellant's invention.

From the foregoing, Appellant submits that the DE 2637484 reference is "... not within the field of the inventor's endeavor," and secondly, is not "... reasonably pertinent to the particular problem with which the inventor was involved." *In re Deminski*, 230 USPQ 1313 (Fed. Cir. 1986). As such, Appellant respectfully requests that this reference not be used as a basis for rejection.

Appellant respectfully requests reconsideration of claim 14 in view of the above arguments relative to the DE 2637484 reference being non-analogous art. Accordingly, Appellant respectfully requests that this reference not be used as a basis for rejection.

B. There is no motivation to combine the references as suggested by the Examiner

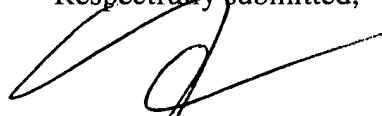
It is well settled in rejecting claims under 35 U.S.C. §103, the Examiner must provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art, or to combine references, to arrive at Appellant's claimed invention. There must be something *in the prior art* that suggests the combination, other than the hindsight gained from knowledge that the inventor choose to combine these particular things in this particular way. Uniroyal Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988). The Examiner is also required to make specific findings on a suggestion to combine prior art references. In Re Dembeczak, 175 F.3d 994, 1000-01, 50 USPQ2d 1614, 1617-19 (Fed. Cir. 1999).

In this case, there is no teaching or suggestion *whatsoever* from the prior art that would motivate one of any skill to combine DE 2637484A and Caruso. The Examiner states that "in view of Caruso (U.S. 3,836,750), it would have been obvious to one of ordinary skill in the art to provide auxiliary ports in conjunction with the main outlet of the previously described apparatus so that back pressure is relieved via the additional ports if the main outlet is blocked." This is pure conjecture on the part of the Examiner, with no support at all *from the prior art*. There is no statement in DE 2637484A that the blocking of a "main outlet" is a problem. Indeed, given that this reference teaches an opposite end of the case interchangeable *to suit different vehicles*, would lead one to conclude that an intimate "blocked" contact with the door lock to be thawed is desirable, and not the opposite, as suggested by the Examiner.

IX. Conclusion

From the foregoing, Appellant submits that none of the present claims are obvious over any permissible combination of the prior art of record with regard to the DE 2637484 reference being non-analogous art. Accordingly, the claims define patentable subject matter and are in condition for allowance. Such action is respectfully requested.

Respectfully submitted,



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Dated: January 21, 2003

APPEALED CLAIMS

1. A device for drying a moist region of a person's body, comprising:

- (a) a housing, having at least one air inlet, and an air outlet;
- (b) an electric fan, mounted within the housing, so as to blow air toward the air outlet;
- (c) an electric power source connected to the electric fan;
- (d) an end piece, having a resilient outermost end, protruding around the air outlet; and
- (e) means for venting air to the atmosphere, bypassing the air outlet if the outermost end of the air outlet is blocked, such that overheating of the fan is avoided;

whereby air is adapted to be directed to a moist region of a person's body, to assist the drying of the moist region, with reduced chance of skin irritation of the person.

2. The device of claim 1, wherein the power source comprises a battery, adapted to power the fan.

3. The device of claim 1, further comprising an air heater mounted within the housing and connected to the power source.

4. The device of claim 1, further comprising a lamp mechanically associated with the housing, so as to illuminate a region to which air is directed.

5. The device of claim 1, in which the end piece is detachable.

6. A forced air drier for drying a baby, comprising:

- (a) a housing, having at least one air inlet, and an air outlet;
- (b) an electric fan, mounted within the housing, so as to force air out of the air outlet;
- (c) an electric power source connected to the electric fan;
- (d) an air-directing mechanism connected to the forced air blower, having a directed air outlet;
- (e) an end piece, having a resilient outermost end, protruding around the directed air outlet; and
- (f) means for venting air to the atmosphere if the outermost end of the air outlet is blocked, such that overheating of the fan is avoided;

whereby the air-directing mechanism can be manipulated so as to direct air towards a baby supported nearby.

7. The device of claim 6, further comprising an air heater, so as to heat air directed towards the baby.

13. A device for drying a moist region of a person's body, comprising:

- (a) a housing, generally forming a tube, having an air outlet and an air inlet;
- (b) an electric fan, mounted within the housing between the air inlet and air outlet, operable to draw air in through the air inlet and blow air out of the air outlet;
- (c) a hand-grip formed on the housing;
- (d) a battery mounted within the housing, adapted to power the electric fan;
- (e) an electrical switch, mounted on the housing, so as to control power to the electric

fan;

(f) a removable end piece, having a resilient outermost end, protruding around the air outlet; and

(g) an opening in the housing of the air outlet for venting air to the atmosphere if the outermost end of the air outlet is blocked, such that overheating of the fan is avoided;

whereby air is directed to the moist region of the person's body, to assist the drying of the moist region, with reduced chance of skin irritation of the person.

14. The device of claim 13, further comprising electrical contacts adapted to allow recharging of the battery.

15. The device of claim 13, further comprising an electrical air heater, so as to heat air blown out of the air outlet.



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JAN 27 2003

TRANSMITTAL OF APPEAL BRIEF (Small Entity)

Docket No.
SHP-02003/03

In Re Application Of: Pollack

Serial No.
09/939,993Filing Date
August 27, 2001Examiner
John A. JefferyGroup Art Unit
3742Invention: **FORCED AIR DRYER FOR INFANT'S BOTTOM**TO THE ASSISTANT COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:

Applicant is a small entity under 37 CFR 1.9 and 1.27.

A verified statement of small entity status under 37 CFR 1.27:

- ☐ is enclosed.
- ☒ has already been filed in this application.

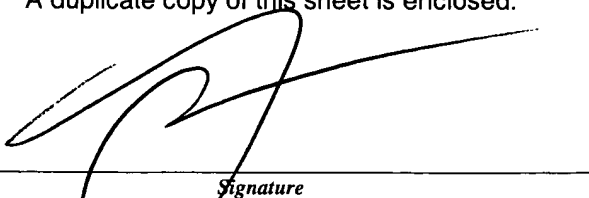
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The fee for filing this Appeal Brief is: **\$160.00**

- ☒ A check in the amount of the fee is enclosed.
- ☐ The Commissioner has already been authorized to charge fees in this application to a Deposit Account. A duplicate copy of this sheet is enclosed.
- ☒ The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. **07-1180**
A duplicate copy of this sheet is enclosed.


SignatureDated: January 21, 2003

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20231.



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cc: